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**HOUSE BILL 498**

**47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005**

**INTRODUCED BY**

**Dani ce Pi craux**

**AN ACT**

**RELATING TO PERSONS WITH DISABILITIES; CREATING THE STATE USE ACT; ESTABLISHING THE NEW MEXICO COUNCIL FOR PURCHASING FROM PERSONS WITH DISABILITIES; PROVIDING A RULEMAKING PROCESS TO IDENTIFY PRODUCTS AND SERVICES TO BE PURCHASED FROM COMMUNITY REHABILITATION PROGRAMS AT FAIR MARKET PRICES BY STATE AGENCIES AND LOCAL PUBLIC BODIES; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.**

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:**

**Section 1. [NEW MATERIAL] SHORT TITLE. --Sections 1 through 6 of this act may be cited as the "State Use Act".**

**Section 2. [NEW MATERIAL] PURPOSE. --The purpose of the State Use Act is to encourage and assist persons with disabilities to achieve maximum personal independence through useful and productive employment by ensuring an expanded and**

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1 constant market for their products and services, thereby  
2 enhancing their dignity and capacity for self-support and  
3 minimizing their dependence on welfare and entitlements.

4 Section 3. [NEW MATERIAL] DEFINITIONS. --As used in the  
5 State Use Act:

6 A. "central nonprofit agency" means a nonprofit  
7 agency approved pursuant to rules of the council to facilitate  
8 the equitable distribution of orders for the products or  
9 services of persons with disabilities to community  
10 rehabilitation programs;

11 B. "community rehabilitation program" means a  
12 nonprofit entity:

13 (1) that is organized under the laws of the  
14 United States or this state, operated in the interest of  
15 persons with disabilities and operated so that no part of the  
16 income of which inures to the benefit of any shareholder or  
17 other person;

18 (2) that complies with applicable occupational  
19 health and safety standards as required by federal or state  
20 law; and

21 (3) that, in the manufacture of products or in  
22 the provision of services, whether or not procured under the  
23 State Use Act, employs during the state fiscal year persons  
24 with disabilities for the manufacture of products or the  
25 provision of services;

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1 C. "council" means the New Mexico council for  
2 purchasing from persons with disabilities;

3 D. "direct labor" means all work required for  
4 preparation, processing and packaging of a product or work  
5 directly relating to the provision of services, but not work  
6 required for or relating to supervision, administration,  
7 inspection or shipping;

8 E. "local public body" means a political  
9 subdivision of the state and the political subdivision's  
10 agencies, instrumentalities and institutions;

11 F. "persons with disabilities" means persons with  
12 mental, developmental or physical impairments that impede them  
13 from seeking or maintaining gainful employment;

14 G. "state agency" means a department, commission,  
15 council, board, committee, institution, legislative body,  
16 agency, government corporation, educational institution or  
17 official of the executive, legislative or judicial branch of  
18 government of this state; and

19 H. "state purchasing agent" means the director of  
20 the purchasing division of the general services department.

21 Section 4. [NEW MATERIAL] COUNCIL FOR PURCHASING FROM  
22 PERSONS WITH DISABILITIES-- APPOINTMENT-- ORGANIZATION. --

23 A. The "New Mexico council for purchasing from  
24 persons with disabilities" is created. The council shall be  
25 composed of the following nine members appointed by the

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1 governor:

2 (1) two persons familiar with employment needs  
3 of persons with disabilities and familiar with current pricing  
4 and marketing of goods and services;

5 (2) two persons representing community  
6 rehabilitation programs that provide employment services to  
7 persons with disabilities;

8 (3) two persons with disabilities;

9 (4) the state purchasing agent, or the state  
10 purchasing agent's designee; and

11 (5) two representatives of governmental  
12 agencies that purchase significant amounts of goods and  
13 services from the private sector, or their designees.

14 B. Council members shall be appointed for three-  
15 year terms. Vacancies shall be filled in the same manner as  
16 for original appointments. A member appointed to fill a  
17 vacancy shall serve for the remainder of the term for that  
18 vacancy. Council members shall continue to serve beyond the  
19 expiration of their terms until new members are appointed.

20 C. The council shall elect a chair from among its  
21 members. Seven members of the council shall constitute a  
22 quorum in order to conduct the council's business.

23 D. Except for the regular pay of public employee  
24 members, council members shall serve without compensation.

25 Section 5. [NEW MATERIAL] AUTHORITY AND DUTIES OF THE

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1 COUNCIL-- RULES. --

2 A. The council shall adopt rules in accordance with  
3 the procedure set out in Subsection E of Section 9-1-5 NMSA  
4 1978 that:

5 (1) determine which products and services  
6 provided by persons with disabilities in community  
7 rehabilitation programs are suitable for sale to state agencies  
8 and local public bodies;

9 (2) establish, maintain and publish a list of  
10 all the products and services identified in Paragraph (1) of  
11 this subsection. The council shall periodically review and  
12 revise this list as products or services are added or removed.  
13 The council shall make the list available to all purchasing  
14 officials of state agencies and local public bodies;

15 (3) verify the fair market prices of the  
16 products and services identified in Paragraph (1) of this  
17 subsection and periodically revise the fair market prices in  
18 accordance with changing market conditions to ensure that  
19 products and services offer the best value for state agencies  
20 and local public bodies. In verifying the fair market value of  
21 products and services, the council shall consider amounts being  
22 paid for similar products and services purchased by the federal  
23 government, the state and local public bodies and by private  
24 businesses, and the actual cost of producing the products or  
25 performing the services at a community rehabilitation program,

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1 taking into consideration the benefits associated with  
2 employing persons with disabilities;

3 (4) establish a procedure to certify eligible  
4 community rehabilitation programs that have products and  
5 services suitable for procurement by state agencies and local  
6 public bodies that will be placed on the list established in  
7 Paragraph (2) of this subsection;

8 (5) establish a procedure for approval of a  
9 central nonprofit agency that shall hold contracts, facilitate  
10 the equitable distribution of orders among community  
11 rehabilitation programs for products and services to be  
12 procured by state agencies and local public bodies and market  
13 approved products and services to state agencies and local  
14 public bodies;

15 (6) establish procedures for the operation of  
16 the approved central nonprofit agency, including a fee  
17 structure for its services; and

18 (7) address any other matter necessary to the  
19 proper administration of the State Use Act.

20 B. The council shall, not later than one hundred  
21 eighty days following the close of each fiscal year, submit to  
22 the governor, the legislature and each community rehabilitation  
23 program a report that includes the names of the council members  
24 serving during the preceding fiscal year, the dates of council  
25 meetings during that year and any recommendations for changes

1 to the State Use Act.

2 Section 6. [NEW MATERIAL] PROCUREMENT BY STATE AGENCIES  
3 AND LOCAL PUBLIC BODIES-- COOPERATIVE AGREEMENTS. --

4 A. A state agency or local public body intending to  
5 procure any product or service on a list published by the  
6 council shall, in accordance with rules of the council, procure  
7 the product or service from a community rehabilitation program  
8 at the price established by the council if the product or  
9 service is available within the period required by the state  
10 agency or local public body. Procurement pursuant to the State  
11 Use Act is exempt from the provisions of the Procurement Code.

12 B. The council and a state agency or local public  
13 body may enter into a cooperative agreement for effective  
14 coordination of the objectives of the State Use Act and any  
15 other law requiring procurement of products or services from a  
16 state agency or local public body.

17 Section 7. Section 13-1-98 NMSA 1978 (being Laws 1984,  
18 Chapter 65, Section 71, as amended) is amended to read:

19 "13-1-98. EXEMPTIONS FROM THE PROCUREMENT CODE. --The  
20 provisions of the Procurement Code shall not apply to:

21 A. procurement of items of tangible personal  
22 property or services by a state agency or a local public body  
23 from a state agency, a local public body or external  
24 procurement unit except as otherwise provided in Sections  
25 13-1-135 through 13-1-137 NMSA 1978;

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1           B. procurement of tangible personal property or  
2 services for the governor's mansion and grounds;

3           C. printing and duplicating contracts involving  
4 materials that are required to be filed in connection with  
5 proceedings before administrative agencies or state or federal  
6 courts;

7           D. purchases of publicly provided or publicly  
8 regulated gas, electricity, water, sewer and refuse collection  
9 services;

10          E. purchases of books and periodicals from the  
11 publishers or copyright holders thereof;

12          F. travel or shipping by common carrier or by  
13 private conveyance or to meals and lodging;

14          G. purchase of livestock at auction rings or to the  
15 procurement of animals to be used for research and  
16 experimentation or exhibit;

17          H. contracts with businesses for public school  
18 transportation services;

19          I. procurement of tangible personal property or  
20 services, as defined by Sections 13-1-87 and 13-1-93 NMSA 1978,  
21 by the corrections industries division of the corrections  
22 department pursuant to [~~regulations~~] rules adopted by the  
23 corrections commission, which shall be reviewed by the  
24 purchasing division of the general services department prior to  
25 adoption;

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1 J. minor purchases not exceeding five thousand  
2 dollars (\$5,000) consisting of magazine subscriptions,  
3 conference registration fees and other similar purchases where  
4 prepayments are required;

5 K. municipalities having adopted home rule charters  
6 and having enacted their own purchasing ordinances;

7 L. the issuance, sale and delivery of public  
8 securities pursuant to the applicable authorizing statute, with  
9 the exception of bond attorneys and general financial  
10 consultants;

11 M contracts entered into by a local public body  
12 with a private independent contractor for the operation, or  
13 provision and operation, of a jail pursuant to Sections  
14 33-3-26 and 33-3-27 NMSA 1978;

15 N. contracts for maintenance of grounds and  
16 facilities at highway rest stops and other employment  
17 opportunities, excluding those intended for the direct care and  
18 support of persons with handicaps, entered into by state  
19 agencies with private, nonprofit, independent contractors who  
20 provide services to persons with handicaps;

21 O. contracts and expenditures for services or items  
22 of tangible personal property to be paid or compensated by  
23 money or other property transferred to New Mexico law  
24 enforcement agencies by the United States department of justice  
25 drug enforcement administration;

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1 P. contracts for retirement and other benefits  
2 pursuant to Sections 22-11-47 through 22-11-52 NMSA 1978;

3 Q. contracts with professional entertainers;

4 R. contracts and expenditures for litigation  
5 expenses in connection with proceedings before administrative  
6 agencies or state or federal courts, including experts,  
7 mediators, court reporters, process servers and witness fees,  
8 but not including attorney contracts;

9 S. contracts for service relating to the design,  
10 engineering, financing, construction and acquisition of public  
11 improvements undertaken in improvement districts pursuant to  
12 Subsection L of Section 3-33-14.1 NMSA 1978 and in county  
13 improvement districts pursuant to Subsection L of Section  
14 4-55A-12.1 NMSA 1978;

15 T. works of art for museums or for display in  
16 public buildings or places;

17 U. contracts entered into by a local public body  
18 with a person, firm, organization, corporation or association  
19 or a state educational institution named in Article 12, Section  
20 11 of the constitution of New Mexico for the operation and  
21 maintenance of a hospital pursuant to Chapter 3, Article 44  
22 NMSA 1978, lease or operation of a county hospital pursuant to  
23 the Hospital Funding Act or operation and maintenance of a  
24 hospital pursuant to the Special Hospital District Act;

25 V. purchases of advertising in all media, including

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1 radio, television, print and electronic;

2 W. purchases of promotional goods intended for  
3 resale by the tourism department; [~~and~~]

4 X. procurement by or through the public education  
5 department from the federal department of education relating to  
6 parent training and information centers designed to increase  
7 parent participation, projects and initiatives designed to  
8 improve outcomes for students with disabilities and other  
9 projects and initiatives relating to the administration of  
10 improvement strategy programs pursuant to the federal  
11 Individuals with Disabilities Education Act; provided that the  
12 exemption applies only to procurement of services not to exceed  
13 two hundred thousand dollars (\$200,000); and

14 Y. procurement of products and services from  
15 community rehabilitation programs pursuant to the State Use  
16 Act. "